

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**Petition of BNE Energy Inc. for a
Declaratory Ruling for the Location,
Construction and Operation of a 4.8 MW
Wind Renewable Generating Project on
Winsted-Norfolk Road in Colebrook,
Connecticut (“Wind Colebrook North”)**

Petition No. 984

June 1, 2011

BNE ENERGY INC’S OBJECTION TO MOTION TO STRIKE POST-HEARING BRIEF

The petitioner, BNE Energy Inc. (“BNE”) respectfully submits this objection to the Motion to Strike BNE Energy Inc.’s Post Hearing Brief (“Brief”) filed by FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”) on May 31, 2011 (the “Motion”). In support of its objection, BNE states as follows:

1. In its Motions Memorandum, dated May 11, 2011, the Siting Council stated that “Briefs and proposed findings of fact may be filed with the Council by any party or intervenor no later than May 27, 2011.”
2. The Motions Memorandum also stated that “[n]o reply briefs without the Council’s permission will be considered by the Council.”
3. BNE timely filed its brief and its proposed findings of facts on May 27, 2011.
4. Despite the Council’s clear prohibition against the filing of reply briefs, the Grouped Parties filed a reply brief on May 31, 2011 without seeking or receiving the Council’s permission to do so.
5. Although the Grouped Parties attempted to characterize their reply brief as a motion to strike, that characterization does not change the fact that the Grouped Parties’ document specifically replies to a portion of BNE’s Brief and is, in actuality, a reply brief. *See Bradshaw v. Unity Marine Corporation, Inc.*, 147 F.

Supp. 2d 668, 671 (S.D. Texas, 2001) (“At the end of the day, even if you put a calico dress on it and call it Florence, a pig is still a pig.”)

6. The crux of the Grouped Parties’ argument in its reply brief is BNE’s request that the Council consider 80 meter hub heights for this project. This request was properly placed in the record, as the Grouped Parties own citation to the transcript demonstrates. *See* Motion, pp. 2-3.
7. Indeed, the Grouped Parties timely objected to the inclusion of this information, and the Grouped Parties’ motion to strike this information from the record was denied by the Council. The Council, through Acting Chairman Tait, stated that the Council would allow the information in the record. *See* Motion, p. 3; *see also* 5/5/11 Tr. 384:16-17.¹
8. Therefore, there is no basis to strike this information from BNE’s Brief. The Council specifically allowed the information into the record over the Grouped Parties’ Objection. BNE should be allowed to refer to this information in its Brief.
9. Moreover, the Grouped Parties have neither sought nor received any permission to file a reply brief in this matter. Therefore, the filing of their reply brief was improper.
10. BNE has incurred costs, principally in the form of legal fees, associated with drafting this Objection.

¹ The Grouped Parties cited this quote in their Motion as Tr. 326:22-23. The version of the Transcript possessed by BNE has the quote at lines 16 and 17 of page 384 of the Transcript. Regardless of the version used, however, the language in the Transcript was accurately copied by the Grouped Parties in their Motion.

WHEREFORE, BNE objects to the Grouped Parties' Motion to Strike BNE Energy Inc.'s Post-Hearing Brief and respectfully requests that the Siting Council deny the Motion. BNE further respectfully requests that the Siting Council award BNE its costs associated with drafting this Objection.

Respectfully Submitted,
BNE ENERGY INC.

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Certification

This is to certify that a copy of the foregoing has been mailed via U.S. Mail, first class postage prepaid, and/or electronically mailed on this date to all parties and intervenors of record.

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